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LOS ANGELES CA 90045

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OCT 02 2006

OFFICE OF PETITIONS

In re Application of :
Chang et al. : DECISION ON APPLICATION
Application No. 09/827,500 : FOR
Filed: April 6, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 103594.00002 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT IN NOTICE OF ALLOWANCE UNDER 37 C.F.R. § 1.705(b)," filed June 6, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to four hundred sixty-four (464) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **two hundred sixty-three (263)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 9, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On June 6, 2006, applicants timely submitted the instant application for patent term adjustment¹. Applicants assert entitled to a period of adjustment of 222 days for the Office taking until December 20, 2004, not February 27,

¹ PALM records indicate that the Issue Payment was filed on June 9, 2006.

2004, to respond to their amendment filed January 12, 2004. Further, applicants dispute the reduction of 301 days for their filing of a response to the non-final Office action mailed February 27, 2004 (and re-mailed on December 20, 2004) on March 24, 2005.

Applicants state that the application is not subject to a terminal disclaimer.

Applicants' arguments have been considered, but not found fully persuasive. Entry of a period of adjustment of 222 days is not warranted. A review of the application history confirms that in response to and within four months of applicants' filing of an amendment after non-final Office action on January 12, 2004, the Office on February 27, 2004 mailed a non-final Office action. This Office action was properly mailed to the correspondence address of record. However, applicants did not receive the Office action. The record does not support a conclusion that the failure to receive the Office action was due to any error on the part of the Office. (A copy of the first page of the Office action as originally mailed is present in the image file wrapper with the contents of the re-mailed Office action mailed December 20, 2004). Thus, there was no examination delay within the meaning of 1.702(a)(2).

Correction of the period of reduction for responding to the Office action is required. As the Office action was not received, the Office action was re-mailed and the period for reply restarted (The entry "Mail Notice of Restarted Response Period" reflects that the original Office action was re-mailed with a new response period). Applicants' delay pursuant to 1.704(b) is properly calculated based on the date of re-mailing of the Office action, December 20, 2004. Accordingly, the period of reduction pursuant to 1.704(b) for applicants taking until March 24, 2005 to respond is 4 days, not 301 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 263 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term

adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Sunday
Date: 10/1/2006

PALM INTRANET

Time: 18:14:23

PTA Calculations for Application: 09/827500

Application Filing Date:	04/06/2001	PTO Delay (PTO):	298
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	332
Post-Issue Petitions:	0	Total PTA (days):	263
PTO Delay Adjustment:	297		

File Contents History

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74	03/09/2006	MAIL EXAMINER'S AMENDMENT			
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72	03/06/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
71	03/06/2006	EXAMINER'S AMENDMENT COMMUNICATION			
70	03/06/2006	NOTICE OF ALLOWABILITY			
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67	02/17/2006	REFERENCE CAPTURE ON IDS			
66	02/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
65	03/02/2006	DATE FORWARDED TO EXAMINER			
64	02/17/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
63	03/02/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
62	02/21/2006	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
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59	02/07/2006	EXPORT TO FINAL DATA CAPTURE			
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57	02/03/2006	DISPATCH TO FDC			

56	12/29/2005	MISCELLANEOUS INCOMING LETTER			
55	01/13/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
54	12/29/2005	ISSUE FEE PAYMENT VERIFIED			
53	12/29/2005	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
52	12/29/2005	ISSUE FEE PAYMENT RECEIVED			
51	12/13/2005	CORRESPONDENCE ADDRESS CHANGE			
50	10/11/2005	EXPORT TO INITIAL DATA CAPTURE			
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41	09/08/2005	DATE FORWARDED TO EXAMINER			
40	08/24/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
39	09/08/2005	DATE FORWARDED TO EXAMINER			
38	08/24/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
37	09/08/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
36	08/24/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
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28	12/20/2004	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
27	12/02/2004	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			

26	12/02/2004	CORRESPONDENCE ADDRESS CHANGE			
25	10/06/2004	CASE DOCKETED TO EXAMINER IN GAU			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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